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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the annual report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson, pursuant to Council resolutions 22/8 and 29/9. The present report is the fifth annual report submitted to the Council by the current mandate holder. In the thematic section of the report, the Special Rapporteur addresses human rights in the context of preventing and countering violent extremism.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report[1] is submitted to the Human Rights Council pursuant to its resolutions 22/8 and 29/9. In section II, the Special Rapporteur lists key activities undertaken from June to December 2015. In section III he focuses on human rights in the context of preventing and countering violent extremism, following the Secretary-General's Plan of Action to Prevent Violent Extremism (A/70/674).

II. Activities of the Special Rapporteur

2. Since the issuance of his previous report to the Human Rights Council (A/HRC/29/51), the Special Rapporteur took part in the activities set out below.

3. On 22 September 2015, the Special Rapporteur participated in a side event on the protection of journalistic sources, held on the margins of the 2015 Human Dimension Implementation Meeting of the Organization for Security and Cooperation in Europe (OSCE), held in Warsaw.

4. On 26 October 2015, the Special Rapporteur presented to the General Assembly his report on the negative impact of counter-terrorism legislation and other measures on civil society (A/70/371). The Special Rapporteur also held an interactive dialogue with the Assembly on the report.

5. On 8 February 2016, the Special Rapporteur participated in the "Counterterrorism and human rights symposium: assessing the consequences of counterterrorism laws and procedures on the French society and civil liberties", organized by Human Rights Watch, the International Federation for Human Rights, Amnesty International and the Human Rights League and held in Paris.

6. On 11 February 2016, the Special Rapporteur participated by videoconference in the "Conference on the promotion and protection of human rights of victims of terrorism", organized by the United Nations Counter-Terrorism Centre under the auspices of the Counter-Terrorism Implementation Task Force Working Group on Supporting and Highlighting Victims of Terrorism, held in New York.

7. The Special Rapporteur continued to take action in response to communications, concerns and allegations received from individuals and organizations. He continued to pursue dialogue with Governments, including by sending requests for official visits. He regrets that despite long-standing requests, invitations were not received during the period under consideration.

III. Preventing and countering violent extremism: a human rights assessment

8. The Secretary-General issued his Plan of Action to Prevent Violent Extremism on 7 January 2016; the General Assembly considered it on 15 January 2016. This key document, which came almost 10 years after the adoption by the Assembly of the United Nations Global Counter-Terrorism Strategy,[2] contains more than 70 comprehensive

[1] The Special Rapporteur would like to thank his Senior Legal Adviser, Anne Charbord, and his Legal Adviser, Jessica Jones, for their assistance with the preparation of this report.

[2] Resolution 60/288, annex.

recommendations for national, regional and international action. In the Plan of Action the Secretary-General recognized that attempts to address violent extremism through security-based counter-terrorism measures had been insufficient to prevent the emergence of new, more virulent, violent extremist groups. His focus on preventive measures built upon comments he made in September 2014 at the Security Council summit on foreign terrorist fighters, in which he noted the dramatic evolution in the nature of the terrorist threat involving violent extremists who thrived in conditions of insecurity and injustice, fragility and failed leadership. He stressed that an effective response must focus on the underlying conditions that provided violent extremist groups the opportunity to take root by providing opportunities for education, employment and inclusion, while engendering respect for human rights, the rule of law and good governance.[3] In January 2016, the United Nations High Commissioner for Human Rights noted that the central challenge for human rights in 2016 was ensuring that Governments continued to support a human rights agenda despite the rise of violent extremism and extremist thinking. Importantly, he noted that any more repressive approach would have the reverse effect of reinforcing the narrative of extremist ideologies.[4] Both the Secretary-General's approach to violent extremism and the High Commissioner's remarks encapsulate some of the complex issues which are central to the present report.

9. The demonstrable inadequacy of a strict security approach to countering terrorism[5] has precipitated a shift in focus of the international community towards measures targeted at addressing the underlying grievances that foster violent extremism. Though not an entirely novel approach,[6] the recent proliferation of initiatives at the international, regional and national levels demonstrate the increasing significance of the issue on the global agenda. In addition to United Nations-led policy work, a few important examples include the White House Summit on Countering Violent Extremism,[7] held in February 2015; a meeting to review progress in countering the Islamic State in Iraq and the Levant and violent extremism,[8] held in September 2015; and the establishment of the International Counterterrorism and Countering Violent Extremism Capacity-Building Clearinghouse Mechanism,[9] along with various counter-extremism projects undertaken by the United

[3] See www.un.org/press/en/2015/sc11912.doc.htm.

[4] See www.un.org/apps/news/story.asp?NewsID=53035#.VqW5plJRmfQ.

[5] Naureen Chowdhury Fink, "Countering violent extremism: what are the key challenges for UN?", International Peace Institute (IPI) Global Observatory, 3 November 2015.

[6] Organization for Security and Co-operation in Europe (OSCE), Bucharest Plan of Action for Combating Terrorism, document MC(9).DEC/1, 4 December 2001, paras. 9 and ff. on preventive action against terrorism in the OSCE area; "Britain's secret plans to win Muslim hearts and minds", *Sunday Times*, 30 May 2004; United Kingdom of Great Britain and Northern Ireland Foreign Commonwealth Office and Home Office, "Draft report on young Muslims and extremism", 2004; Paul Thomas, "Failed and friendless: the UK's 'Preventing Violent Extremism' programme", *British Journal of Politics and International Relations*, vol. 12, No. 3 (August 2010), pp. 442-458; Peter Romaniuk, *Does CVE Work? Lessons Learned from the Global Effort to Counter Violent Extremism* (Goshen, Indiana, Global Center on Cooperative Security, 2015); reference to "winning the war of ideas" contained in the National Strategy for Combating Terrorism of the United States of America (2003).

[7] See: www.whitehouse.gov/the-press-office/2015/02/18/fact-sheet-white-house-summit-countering-violent-extremism. Regional meetings were subsequently held in Albania, Algeria, Australia, Kazakhstan, Kenya, Mauritania, Norway, Singapore and Turkey.

[8] See www.whitehouse.gov/the-press-office/2015/09/29/leaders-summit-countering-isil-and-violent-extremism.

[9] See www.state.gov/r/pa/prs/ps/2015/09/247368.htm.

Nations Development Programme.[10] At the regional level, in December 2015 OSCE adopted a ministerial-level declaration on preventing and countering violent extremism[11] and has started a campaign on the issue, with the hashtag #UnitedCVE. A regularly updated European Union Strategy on Prevention of Radicalization and Recruitment was first promulgated in 2005[12] and in 2011, the Radicalization Awareness Network was set up as a European Union-wide umbrella network of stakeholders.[13] National initiatives include the Strategic Implementation Plan for Empowering Local Partners to Prevent Violent Extremism (2011) adopted by the United States of America,[14] the Prevent strategy (2011) of the United Kingdom of Great Britain and Northern Ireland, the Countering Violent Extremism Programme (2014) of Nigeria and the Action Plan against Radicalisation and Violent Extremism (2014) of Norway. There are also a number of independent centres that address this topic, such as the Global Counter-Terrorism Forum[15] and Hedaya, an independent, multilateral centre devoted to training, dialogue, collaboration and research to counter violent extremism in all its forms.

10. In the present report the Special Rapporteur focuses on the human rights impact of measures adopted to prevent or counter violent extremism. Following a brief examination of key semantic and conceptual challenges, he examines the United Nations policy framework on preventing and countering violent extremism and its impact on human rights. He then focuses on the human rights impact of measures adopted at the national level to counter or prevent violent extremism, followed by an examination of the relationship between countering or preventing violent extremism and addressing the conditions conducive to terrorism or violent extremism, and gender. The Special Rapporteur then draws conclusions and makes recommendations.

A. Semantic and conceptual challenges

11. Despite the numerous initiatives to prevent or counter violent extremism,[16] there is no generally accepted definition of violent extremism, which remains an "elusive concept".[17] A number of definitions are proposed at the national level. The Government of

[10] United Nations Development Programme Regional Bureau for Africa, *Preventing and Responding to Violent Extremism in Africa: A Development Approach* (n.d.).

[11] Ministerial Declaration on Preventing and Countering Violent Extremism and Radicalization that Lead to Terrorism, document MC.DOC/4/15, 4 December 2015.

[12] See http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014781%202005%20REV%201.

[13] See objective 2 of the European Union Internal Security Strategy in Action: five steps towards a more secure Europe, document COM (2010)673, 22 November 2010.

[14] See www.whitehouse.gov/sites/default/files/sip-final.pdf.

[15] The Forum provides a venue for national counter-terrorism officials and practitioners to meet with their counterparts and supports the implementation of the United Nations Global Counter-Terrorism Strategy.

[16] While the Security Council "counters" violent extremism, the Secretary-General has developed a plan to "prevent" violent extremism, and OSCE does both. States do either, or "respond" to violent extremism. This report uses the word 'counter'.

[17] OSCE/Office for Democratic Institutions and Human Rights (ODIHR), *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community Policing Approach* (2014), p. 35. See also Maleika Malik, "Extreme speech and liberalism", in Ivan Hare and James Weinstein, eds., *Extreme Speech and Democracy* (Oxford, Oxford University Press, 2007), quoted in Agnes Callamard, "Religion, terrorism and speech in a 'post-Charlie Hebdo' world", *Religion and Human Rights*, vol. 10, No. 3 (2015), pp. 207-228. For its part, the United States Agency for International Development (USAID) provides a definition in *The Development Response to Violent Extremism and Insurgency: Putting Principles into Practice*, USAID Policy, September 2011.

Australia deems violent extremism to be "the use or support of violence to achieve ideological, religious or political goals";[18] Norway defines it as activities of persons and groups that are willing to use violence in order to achieve political, ideological or religious goals;[19] and Sweden defines a violent extremist as someone "deemed repeatedly to have displayed behaviour that does not just accept the use of violence but also supports or exercises ideologically motivated violence to promote something".[20]

12. In the United Kingdom extremism is defined as the vocal or active opposition to fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs, as well as calls for the death of United Kingdom armed forces at home or abroad.[21] In Denmark, extremism is used to describe groups that can be characterized by their simplistic views of the world and of "the enemy", that reject fundamental democratic values and norms and that use illegal and possibly violent methods to achieve political/religious or ideological goals.[22] These extensive definitions demonstrate the breadth of States' approach to extremism.

13. Conceptually, it has been challenging to differentiate between violent extremism and terrorism, with the two terms often used interchangeably and without a clear delineation of the boundaries between them.[23] The position of the Secretary-General is that "violent extremism encompasses a wider category of manifestations [than terrorism]" (see A/70/674, para. 4), since it includes other forms of ideologically motivated violence.[24] At the same time, the conditions conducive to violent extremism identified in the Secretary-General's Plan of Action and the conditions conducive to terrorism identified in pillar I of the United Nations Global Counter-Terrorism Strategy are almost identical. It is noteworthy that — at the international level at least — countering violent extremism is mainly addressed in the context of combating terrorism.[25]

14. A further conceptual challenge relates to our understanding of the "radicalization process" through which individuals adopt violent extremist ideologies that may lead them to commit acts of terrorism, or that makes them vulnerable to recruitment by terrorist organizations.[26]

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[18] See www.ag.gov.au/NationalSecurity/Counteringviolentextremism/Pages/default.aspx.

[19] See www.counterextremism.org/resources/details/id/679/action-plan-against-radicalisation-and-violent-extremism.

[20] See Government of Sweden, Action Plan to Safeguard Democracy against Violence-Promoting Extremism, government communication 2011/12:44, point 3.2.

[21] Government of the United Kingdom, *Counter-Extremism Strategy* (London, 2015), para. 1 and the Prevent strategy, 2011, annex A. Note that the Prime Minister's Task Force on Tackling Radicalisation and Extremism defined "Islamist extremism" in paragraph 1.4 of its 2013 report.

[22] Government of Denmark, *Prevention of Radicalisation and Extremism Action Plan* (Copenhagen, 2014).

[23] Minerva Nasser-Eddine and others, Countering Violent Extremism (CVE) Literature Review, Government of Australia, Department of Defence, Counter Terrorism and Security Technology Centre, Defence Science and Technology Organisation, document DSTO-TR-2522, March 2011.

[24] Romaniuk, *Does CVE work?*.

[25] See A/70/674, para. 2; OSCE Ministerial Declaration and OSCE/ODIHR, *Preventing Terrorism*; and Security Council resolution 2178 (2014).

[26] In paragraph 4 of its first report, "Inventory of State programmes", the Counter-Terrorism Implementation Task Force Working Group on Radicalization and Extremism that Lead to Terrorism: made a distinction between counter-radicalization (or "upstream") and deradicalization (or "downstream") programmes. States focus on one or the other, or a combination of both. Examples of the "upstream" or combination programmes are the 2009 "Deradicalization – targeted intervention" programme in Denmark (see fact sheet, available from www.nyidanmark.dk/NR/rdonlyres/8A7278CB-EFAD-43CC-B6E4-EE81B8E13C6D/0/factsheetderadicalisation.pdf); the Religious

15. Many programmes directed at radicalization are based on a simplistic understanding of the process as a fixed trajectory to violent extremism with identifiable markers along the way.[27] That has sometimes elided factors that are recognized in hindsight as having contributed to an individual's radicalization with predictive markers of general application. A more accurate understanding is that the path to radicalization is individualized[28] and non-linear, with a number of common "push" and "pull" factors but no single determining feature.[29] A confluence of issues at the local, national and supranational levels may all play a part in promoting or avoiding radicalization and, when considering influencing factors, States have tended to focus on those that are most appealing to them, shying away from the more complex issues, including political issues such as foreign policy and transnational conflicts.[30] Commentators have noted that there can be too much focus on religious ideology as the driver of terrorism and extremism,[31] while factors related to identity,[32] or misguided altruism, are overlooked.[33]

16. In his Plan of Action the Secretary-General noted that there were no authoritative statistical data on the pathways towards individual radicalization (see A/70/674, para. 23). Yet he rightly acknowledged that violent extremism, while unjustifiable, did not occur in a vacuum (ibid., para. 3). He noted that the creation of open, equitable, inclusive and pluralist societies, based on full respect for human rights and with economic opportunities for all, represented the most tangible and meaningful alternative to violent extremism and the most promising strategy for rendering it unattractive (ibid., para. 7). In that respect, the Special Rapporteur notes with interest the Ankara Memorandum on Good Practices for a Multisectoral Approach to Countering Violent Extremism adopted by the Global Counterterrorism Forum.

17. Countering violent extremism involves "the use of non-coercive means to dissuade individuals or groups from mobilizing towards violence and to mitigate recruitment,

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Rehabilitation Group in Singapore; and the Channel: Supporting Individuals Vulnerable to Recruitment by Violent Extremists programme in the United Kingdom. For an insight into a deradicalization programme, see Dounia Bouzar, *La vie après Daesh* (Atelier, 2015). See also OSCE/ODIHR, *Preventing Terrorism*, p. 35 and the Programme de prévention de la radicalisation violente in Belgium, which states that radical ideas are not problematic in themselves but can in fact be beneficial for society, as they can push societies forward.

[27] Marc Sageman "The stagnation in terrorism research, terrorism and political violence", *Terrorism and Political* Violence, vol. 26, No. 4 (2014), pp. 568-569.

[28] See European Parliament, document A8-0316/2015.

[29] Faiza Patel, *Rethinking Radicalization* (New York, Brennan Center for Justice, 2011); Romaniuk, *Does CVE Work?*; Lynn Davies and others, *Formers and Families: Transitional Journeys In and Out of Violent Extremism in the UK* (ConnectJustice, 2015); and Louise Richardson, *What Terrorists Want* (John Murray, 2006), pp. 60 ff. For a pre-2001 account, see Martha Crenshaw, "The causes of terrorism", *Comparative Politics*, vol. 13, No. 4 (July 1981), pp. 379-399.

[30] Faiza Patel and Richard Barrett, video and highlights from a conversation on countering violent extremism, Just Security and Project for the Study of the 21st Century (PS21), 1 July 2015, available from www.justsecurity.org/24335/video-highlights-conversation-cve/; and Davies and others, *Transitional Journeys*. See also the United States National Strategy for Combating Terrorism, p. 25 and Waterhouse Consulting Group, "Preventing violent extremism: an independent evaluation of the Birmingham Pathfinder", 2008, p. 12.

[31] Interview with Marc Sageman, E-International Relations, 20 November 2014; Arun Kundnani, *A Decade Lost: Rethinking Extremism and Radicalisation* (London, Claystone, 2015), pp. 10-11.

[32] Scott Atran, address to the Security Council on 23 April 2015, available from http://blogs.plos.org/neuroanthropology/2015/04/25/scott-atran-on-youth-violent-extremism-and-promoting-peace/.

[33] Andrew Silke, "Cameron's anti-terror strategy is 'barking up wrong tree', says expert", *Guardian*, 20 July 2015. See also the report of the Special Rapporteur on freedom of religion or belief (A/HRC/28/66), paras. 19 and 22-38, and Kundnani, *A Decade Lost*, pp. 22-25.

support, facilitation or engagement in ideologically motivated terrorism by non-state actors in furtherance of political objectives".[34] Though often characterized as the "soft" cousin of counter-terrorism initiatives, strategies to counter violent extremism contain their own tangible risks for human rights.

B. Human rights impact of the international policy framework to counter and prevent violent extremism

1. Security Council

Countering violent extremism: resolution 2178 (2014)

18. On 24 September 2014, at the conclusion of a high-level open debate, the Security Council adopted resolution 2178 (2014) in which it addressed, inter alia, the threat posed by foreign terrorist fighters. The resolution includes a section on countering violent extremism in order to prevent terrorism as an integral part of addressing the threat to international peace and security posed by foreign terrorist fighters. The Council recommended that States engage relevant local communities and non-governmental actors to counter the violent extremist narrative that could incite terrorist acts and address the conditions conducive to the spread of violent extremism by empowering youths, families, women and religious, cultural and education leaders. States were encouraged to promote social cohesion and inclusion and to adopt tailored approaches to countering recruitment to violent extremism.

19. The resolution, adopted under Chapter VII of the Charter of the United Nations, is indicative of the shift in the approach taken by the United Nations and the recognition that a counter-terrorism response confined to security measures is insufficient.[35]

20. The resolution contains a strong human rights clause in which the link between a lack of respect for human rights and increased radicalization is noted. That has not, however, assuaged concerns that the lack of clarity in the definition of violent extremism, together with the latitude provided by the resolution, may lead some States to implement highly intrusive, disproportionate or discriminatory measures against individuals.

21. Indeed, in the resolution the Security Council called on Member States to address the phenomena of violent extremism and radicalization but failed to provide any comprehensive definition of the terms. The Special Rapporteur is particularly concerned about the term "extremism", which had been used by several States prior to the adoption of resolution 2178 (2014), not as part of a strategy to counter violent extremism, but as an offence in itself.[36] In that context, it has attracted well-founded concern that the vagueness of the concept could lead to its use against members of religious minorities, civil society, human rights defenders, peaceful separatist and indigenous groups and members of political opposition parties.[37] The Human Rights Committee has stressed the need to ensure that

[34] Humera Khan, "Why countering extremism fails", *Foreign Affairs*, 18 February 2015.

[35] See A/70/371, para. 14. See also Security Council resolution 2129 (2013).

[36] SOVA Center for Information and Analysis, "The structure of Russian anti-extremist legislation", November 2010. See also Inter-parliamentary Assembly of Member Nations of the Commonwealth of Independent States, Model Law on Countering Extremism, available from http://cis-legislation.com/document.fwx?rgn=30827.

[37] See A/HRC/16/53/Add.1, paras. 99-106 and A/HRC/10/3, para. 35. See also International Federation for Human Rights, *Shanghai Cooperation Organisation: A Vehicle for Human Rights Violations* (Paris, 2012). See further Article 19, "Russia: amendments to extremist legislation further restricts freedom of expression", 19 July 2007, on Russia's law on "Counteracting Extremist Activity", adopted in 2002. Available from www.article19.org/data/files/pdfs/press/russia-foe-violations-pr.pdf.

offences such as "extremist activity" are clearly defined to ensure that they do not lead to disproportionate interference with freedom of expression.[38] This concern has been reiterated in the current context, with non-governmental organizations noting that "extremism" and "radicalization" are "poorly defined concepts which open the door to human rights abuses. Several Governments already routinely label political opponents and journalists as terrorists. Identifying 'extremism' as the problem only provides more grounds to crush dissent".[39] The inherent risks of relying on poorly defined concepts are well illustrated by a number of recent cases where legislation relating to extremism was used against the activities[40] of non-violent groups, or the religious texts[41] of non-violent groups, and against journalists and political activists critical of State policy.[42] The Special Rapporteur recalls that States must ensure that any legislation complies fully with the principle of legality as enshrined in article 15 of the International Covenant on Civil and Political Rights such that criminal liability is narrowly and clearly defined.

22. The United Nations High Commissioner for Human Rights has observed that one of the greatest human rights challenges for 2016 is the immense pressure on civil society caused by the rise of violent extremism and the often repressive governmental response to it.[43] There is serious concern that resolution 2178 (2014) will exacerbate this situation, notwithstanding the Security Council's recognition of the key role civil society plays in countering violent extremism.[44] The Special Rapporteur recalls that States have a duty to protect civil society. Any measure that could have an impact on civil society's existence or its ability to develop and be effective or independent would be counterproductive to States' counter-extremism efforts. States should ensure that their counter-extremism measures do not have a negative impact on civil society's rights to freedom of association, expression, assembly and privacy and that the principles of necessity, proportionality and non-discrimination are respected.

Incitement to terrorism: resolutions 2178 (2014) and 1624 (2005)

23. In resolution 2178 (2014) the Security Council referred to the need for strategies to counter the violent extremist narrative that can incite terrorist acts. Resolution 1624 (2005) already contained the clear obligation to prohibit by law incitement to commit terrorist acts. Consequently, while States are largely free to adopt the measures they see fit to counter violent extremism, they are required, through a combination of resolutions 2178 (2014) and 1624 (2005), to adopt legislative measures to address incitement to acts of terrorism.[45]

24. Resolution 1624 (2005) contains a strong human rights clause which specifically refers to article 19 of the International Covenant on Civil and Political Rights on freedom of

[38] Human Rights Committee, general comment No. 34 (2011) on article 19: freedoms of opinion and expression, para. 46.

[39] See American Civil Liberties Union, Article 19 and Brennan Centre for Justice at the New York University Law School, letter dated 24 December 2015 addressed to the Special Rapporteur, on file with the Special Rapporteur. See also Article 19, "UN HRC: resolution on violent extremism undermines clarity", 8 October 2015.

[40] SOVA, Misuse of anti-extremism legislation, November 2015.

[41] Ibid. See also Columbia University, Global Freedom of Expression, "The case of *Prayers to God: its Purpose and Place in Islam* book".

[42] See the case of Russian journalist Boris Stomakhin. See also Russian Legal Information Agency, "Russia's Supreme Court upholds 7-year sentence for journalist for inciting terrorism".

[43] See www.un.org/apps/news/story.asp?NewsID= 53035#.VqW5plJRmfQ.

[44] See resolution 2178 (2014).

[45] See also European Council framework decision 2002/475/JHA, which also aims at criminalizing incitement without defining it.

expression. There remain, however, serious human rights concerns linked to the criminalization of incitement, in particular around freedom of expression and the right to privacy. The Secretary-General has said that laws should only allow for the criminal prosecution of direct incitement to terrorism, that is, speech that directly encourages the commission of a crime, is intended to result in criminal action and is likely to result in criminal action (see A/63/337, para. 62). The former Special Rapporteur on human rights and counter terrorism noted that for the offence of incitement to terrorism to comply with international human rights law, it (a) must be limited to the incitement to conduct that is truly terrorist in nature; (b) must restrict freedom of expression no more than is necessary for the protection of national security, public order and safety or public health or morals; (c) must be prescribed by law in precise language and avoid vague terms such as "glorifying" or "promoting" terrorism; (d) must include an actual (objective) risk that the act incited will be committed; (e) should expressly refer to intent to communicate a message and intent that this message incite the commission of a terrorist act; and (f) should preserve the application of legal defences or principles leading to the exclusion of criminal liability by referring to "unlawful" incitement to terrorism.[46]

2. General Assembly

25. In its latest review of the Global Counter-Terrorism Strategy, resolution 68/276, the General Assembly expressed its alarm at violent extremism which claimed innocent lives, caused destruction and displaced people, and referred to acts of violent extremism and incitement to commit terrorist acts that spread hate and threaten lives. In resolution 68/127, entitled "A world against violence and violent extremism", the Assembly called upon all States in their fight against violent extremism to protect human rights, fundamental freedoms and the rule of law and support all actions to foster understanding, tolerance and non-violence.

3. Human Rights Council

26. On 2 October 2015, following an intense debate, the Human Rights Council adopted its first resolution on human rights and countering extremism.[47] The Council noted the interrelatedness of promoting human rights and preventing violent extremism. In particular, the Council noted that abuses and violations of human rights might create an environment in which people were vulnerable to radicalization and recruitment by violent extremist groups.

27. In the resolution the Council described acts, methods and practices of violent extremism, in all their forms and manifestations, as activities that aimed to threaten the enjoyment of human rights and fundamental freedoms, and democracy, and threatened territorial integrity and the security of States, and destabilized legitimately constituted Governments. The Special Rapporteur notes the extensive nature of that description of the impact of violent extremism and the absence of any requirement that the activities themselves involve the use of violence. That may allow some Governments to qualify non-violent actions that are critical of the Government as violent extremism. His concern is

[46] See A/HRC/16/51, para. 31. A model offence of incitement to terrorism was also provided in paragraphs 29-32 of the report. See also article 5 of the Council of Europe Convention on the Prevention of Terrorism on the public provocation to commit acts of terrorism and OSCE/ODIHR, *Preventing Terrorism*, p. 42.

[47] Resolution 30/15, co-sponsored by over 40 member and non-member States of the Council, was adopted by a vote of 37 to 3, with 7 abstentions. The debate, amendments, oral revisions and lack of consensus reveal important disagreements within the Council, mainly about whether to include causes of violent extremism and whether violent extremism should refer to ideologies or acts.

compounded by the reference in the resolution to "extremist ideologies or intolerance" without any reference to violence and the use of the vague expression "supporters" of violent extremists.

28. The Special Rapporteur is concerned that the resolution may contribute to further limitations on the space in which civil society operates. He recalls that in resolution 27/31 the Human Rights Council not only urged States to create and maintain, in law and practice, a safe and enabling environment in which civil society could operate free from hindrance and insecurity, but, crucially, emphasized the importance of civil society space for empowering persons belonging to minorities and vulnerable groups and persons espousing minority or dissenting views or beliefs. The Special Rapporteur is concerned that resolution 30/15 not only fails to acknowledge the abuse suffered by civil society in recent years, but may contribute to further restrictions on its activities across the world.[48] Rather, the engagement of civil society organizations in the fight against extremism, as has been a feature of the Counter-Extremism Strategy of the United Kingdom, should be encouraged.

4. Secretary-General

29. The long-awaited Plan of Action on Preventing Violent Extremism, presented to the General Assembly by the Secretary-General, is an enormously significant development in the global fight against violent extremism. In the Plan of Action, the Secretary-General examined various aspects of violent extremism, including its impact, context and drivers, highlighting the importance of conditions conducive to violent extremism (pillar I of the Global Counter-Terrorism Strategy) in any radicalization process. He set out an Agenda for Action to prevent violent extremism, which included a recommendation that each Member State adopt a national strategy to prevent the further spread of violent extremism. Most importantly, in the Plan of Action the Secretary-General acknowledged the centrality of human rights to the question of violent extremism. He recalled the critical role of respect for all human rights in preventing violent extremism and placed human rights as a red thread throughout his Plan.

30. This was done, first, by highlighting the negative impact that violent extremism had on human rights. The Secretary-General noted that violent extremism was an affront to human rights (see A/70/674, para. 1) and posed a direct threat to the enjoyment of fundamental rights.

31. Second, the Secretary-General noted the role that human rights violations might play in leading to violent extremism. He highlighted that narratives of grievances, actual or perceived injustice, and promised empowerment and sweeping change became attractive where human rights were being violated (ibid., para. 3). Repressive policies and practices that violated human rights and the rule of law could heighten the lure of violent extremism, while other grievances — particularly a lack of economic, social and cultural rights — also provided opportunities for violent extremists (ibid., paras. 27-29).

32. Concomitantly, the Secretary-General noted that individual experiences of human rights violations, such as torture or violations of due process rights (ibid., para. 33), could play a role in an individual's path to radicalization. Violations of the right to education might also play a role in this process (ibid., para. 34).

33. Finally, the Secretary-General insisted on the importance of respecting human rights when adopting measures to prevent violent extremism. Echoing the United Nations Global Counter-Terrorism Strategy, the Secretary-General noted that preventing violent extremism was a commitment and an obligation of States under the Charter of the United Nations and

[48] Article 19, "UN HRC: resolution on violent extremism undermines clarity", 8 October 2015.

international human rights law (ibid., para. 50). He stressed that where States embraced international human rights norms and standards and upheld the rule of law, they created an enabling environment for civil society and reduced the appeal of violent extremism. To be effective and sustainable, all Member States' efforts to address violent extremism must be firmly grounded in the rule of law and international human rights law, as well as international humanitarian law if applicable (ibid., paras. 20 and 50).

34. In practical terms, the Secretary-General recommended that States take a number of steps, including a review of all national legislation, policies, strategies and practices aimed at countering violent extremism, to ensure that they respected human rights and the rule of law. He also noted a number of specific measures for States to attend to: access to justice for all; fair, effective, accountable and inclusive institutions; non-discriminatory basic service provision and accountability for service delivery; professionalism of security forces, law enforcement agencies and justice institutions subject to effective oversight and accountability; accountability for gross violations of international human rights law and international humanitarian law; reform of national legal frameworks and penitentiary systems; age and gender-sensitive disengagement, rehabilitation and counselling programmes for persons engaged in violent extremism; promotion of economic, social and cultural rights; addressing incitement to violent extremism and the prohibition of advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence; appropriate measures against all forms of intolerance and discrimination based on religion or belief in the educational system; and restrictions to freedom of expression that complied with international law.[49]

35. As discussed above, a key criticism of the Plan of Action is the absence of any definition of violent extremism, despite a detailed framework for addressing it. The Secretary-General justified the use of the term as necessary to avoid a conflation of terrorism and violent extremism which might lead to the justification of an overly broad application of counter-terrorism measures, including against forms of conduct that should not qualify as terrorist acts (ibid., para. 4). While agreeing with the assessment that counter-terrorism measures are often too liberally applied to conduct that is not terrorism, the Special Rapporteur warns against the use of new terminology that, conceptually, has the same shortcomings as the term terrorism.[50] Indeed, in the absence of a clear definition of violent extremism, and considering that measures to prevent violent extremism may also have a serious impact on human rights, the introduction of new terminology does not provide any protection against abusive application. Given the absence of any attempt at a definition of violent extremism at the international level[51] and the broad national definitions, the use of the term as a basis for the adoption of new strategies, measures and legislation may prove even more dangerous for human rights than the term terrorism.

C. Impact on human rights of measures to counter and prevent violent extremism

36. Measures taken by States to counter or prevent violent extremism, whether to operationalize Security Council resolution 2178 (2014) or otherwise, include a wide array

[49] For a critique of the Plan of Action, see Naz Modirzadeh, "If it's broke, don't make it worse: a critique of the UN Secretary-General's plan of action to Prevent Violent extremism", Lawfare, 23 January 2016.

[50] See, for example, E/CN.4/2005/103, para. 32 and E/CN.4/2006/98, para. 26.

[51] Whereas for terrorism, at the international level there are 12 "sectoral" conventions, a draft definition in the draft comprehensive convention on international terrorism and Security Council resolution 1566 (2005).

of legislative, administrative and policy measures which target a range of activities, individuals and communities. States have included in this category measures that criminalize preparatory offences to terrorism and measures that focus on countering the appeal of, or preventing individuals from being drawn into, terrorism. Some measures target "extremist" speech,[52] or highlight the plight of victims of terrorism. Some States include programmes involving individual interventions and counselling, or building the capacity of certain communities; others have adopted measures that focus on the underlying conditions that are conducive to terrorism.

37. All of the above measures carry some risk of violating basic human rights and freedoms. Particularly concerning from a human rights perspective are measures that target specific individuals or groups based on a determination that they are particularly "at risk" of violent extremism. Such an approach can be discriminatory and stigmatize various minority, ethnic, religious or indigenous groups. The creation of inchoate offences that are far removed from the commission of acts of violence can violate freedom of expression, thought, conscience, religion or belief, while freedom of assembly and association can be affected by measures to curb "extremist" non-governmental organizations. Measures that involve educational institutions can have an impact on the right to education and academic freedom. Administrative measures taken on the basis of suspicion, or secret intelligence, raise very serious concerns about the right to the presumption of innocence, due process and a fair trial. It is critical that States strictly monitor the human rights compliance of measures adopted to counter violent extremism and ensure transparency in the operation of their initiatives.

1. Impact of measures that limit expression and ban online content

38. At the outset, the Special Rapporteur would like to recall that freedom of expression applies to all forms of ideas, information and opinions, including those that offend, shock or disturb the State or any part of the population.[53] While the right to freedom of expression is a qualified right that can, and sometimes must, be limited,[54] these restrictions must not jeopardize the essence of the right. Thus, it must remain clear that simply holding or peacefully expressing views that are considered "extreme" under any definition should never be criminalized, unless they are associated with violence or criminal activity. The peaceful pursuance of a political, or any other, agenda — even where that agenda is different from the objectives of the Government and considered to be "extreme" — must be protected. Governments should counter ideas they disagree with, but should not seek to prevent non-violent ideas and opinions from being discussed.

39. The Special Rapporteur is cognizant of the difficulties inherent in that proposition, particularly in the light of a dangerous grey zone of expression that lies somewhere between peaceful expression and incitement, and that needs to be addressed. Governments have observed that certain groups and individuals exploit freedom of expression by spreading offensive messages that do not meet the threshold of incitement or discrimination, but that do merit condemnation (see A/67/357, para. 32). This includes speech that is not a direct call for action,[55] but that prepares the ideological ground for

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[52] For detailed information on this section, see Callamard, "Religion, terrorism and speech".

[53] European Court of Human Rights, *Handyside v. United Kingdom* (application 5493/72), 7 December 1976.

[54] International Covenant on Civil and Political Rights, art. 20; International Convention on the Elimination of All Forms of Racial Discrimination, art. 4; Convention on the Prevention and Punishment of the Crime of Genocide, art. 3 (c); Security Council resolution 1624 (2005).

[55] See International Criminal Court for Rwanda, *Prosecutor v. Akayesu*, case No. ICTR-96-4-T, judgment of 2 September 1998, paras. 555-557.

violent action.[56] To respond, many States have sought to adopt new legislation to criminalize "extremist" speech that does not amount to incitement[57] by creating offences such as "advocating" terrorism,[58] the direct or indirect "inducement", "encouragement"[59] or "glorification" of terrorism,[60] or lending material support to terrorism.[61] Others have converted previously civil offences into criminal offences.[62] These new offences have in common that liability is based on the content of the speech, rather than the speaker's intention or the actual impact of the speech. The Human Rights Committee has highlighted that offences of "praising", "glorifying" or "justifying" terrorism must be clearly defined to ensure that they do not lead to unnecessary or disproportionate interferences with freedom of expression.[63] The Secretary-General has deprecated the "troubling trend" of criminalizing the glorification of terrorism, considering it to be an inappropriate restriction on expression (see A/63/337, para. 61). Following one case in which an individual was convicted of providing material support for Al-Qaida by translating and posting on the Internet recruitment videos and other documents, critics decried that "ordinary people — including writers and journalists, academic researchers, translators, and even ordinary web surfers — [can] be prosecuted for researching or translating controversial and unpopular ideas".[64]

40. The role that the Internet has played in the recruitment or radicalization of individuals has led many States to adopt a combination of repressive legislative measures to block, filter and ban specific content or entire websites. In some cases, mechanisms have been set up to identify and refer content to Internet and social media companies for removal.[65] The volume of unlawful content removed by Internet companies has increased significantly, to 46,000 pieces in 2014 (see S/2015/683, annex, para. 17). The Special Rapporteur recalls that any measure taken to prevent or remove messages communicated through the Internet or other forms of technology constitute an interference with the right to freedom of expression and must be justified. The Human Rights Committee notes that bans on the operation of certain sites should not be generic but content-specific, and that no site or information-dissemination system should be prohibited from publishing material solely on the basis that it may be critical of the Government or the social system espoused by the Government.[66] Independent judicial recourse must be available. Laws that allow executive authorities to block websites may not comply with this requirement in the absence of any initial judicial control or ex post facto judicial recourse.[67] In addition, the Special

[56] United Kingdom, Counter-Extremism Strategy, para. 10.

[57] Callamard, "Religion, terrorism and speech".

[58] Parliament of Australia, Senate, Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, explanatory memorandum circulated by the Attorney-General.

[59] See The Terrorism Acts in 2014. report of the Independent Reviewer of Counter-Terrorism Legislation, David Anderson, QC, para. 9.8.

[60] United Kingdom Terrorism Act 2006.

[61] See Supreme Court of the United States, *Holder v. Humanitarian Law Project* and A/70/371

[62] France, in legislation on countering terrorism adopted in November 2014.

[63] General comment No. 34, para. 46.

[64] American Civil Liberties Union, "Mehanna verdict compromises first amendment, undermines national security", 20 December 2011. See also The Investigative Project (www.investigativeproject.org) and *New York Times*, "College student in Queens is charged with conspiring to support ISIS", 16 June 2015.

[65] Europol Internet Referral Unit to Combat Terrorist and Violent Extremist Propaganda; United Kingdom Counter-Terrorism Internet Referral Unit.

[66] General comment No. 34, para. 43.

[67] Amnesty International France, "Blocage des sites internet en France : l'autorisation d'un juge est indispensable", 18 March 2015; Human Rights Watch, "Russia: halt orders to block online media", 23 March 2014. Note that the law has since entered into force.

Rapporteur recalls his conclusion that States' obligations under article 17 of the International Covenant on Civil and Political Rights include the obligation to respect the privacy and security of digital communications. This implies in principle that individuals have the right to share information and ideas with one another without interference by the State, secure in the knowledge that their communication will reach and be read by the intended recipients alone. Measures that interfere with this right must by authorized by domestic law that is accessible and precise, must pursue a legitimate aim and meet the tests of necessity and proportionality (see A/69/397, para. 58). The Special Rapporteur on the right to freedom of opinion and expression has noted that many of the efforts to combat hate speech (including requests to block websites) are misguided and, as with violent extremism, strategies addressing the root causes of such viewpoints are to be prioritized (see A/67/357, paras. 32, 33 and 56). The Special Rapporteur recognizes the importance of not letting hate speech go unchecked, but agrees that the underlying causes should also be addressed.

2. Impact of measures that limit the movement of individuals

41. Some States are considering modifying various aspects of their legislation to prevent the internal movement or entry of individuals considered to be "extremists". These might include measures that exclude individuals from returning to a country where they have the right of abode, relocate individuals within their country of residence or nationality, amend citizenship rules or review the rules applicable to asylum seekers.[68] Such measures can obviously have a serious impact on freedom of movement; the presumption of innocence and the right to due process; the right to protection for the home, family life and privacy; the right to be protected against the arbitrary deprivation of nationality; the right to liberty and security; and the rights to freedom of religion, belief, opinion, expression or association. They may also have a serious impact on the right of refugees to protection under the 1951 Convention relating to the Status of Refugees. Such measures are particularly problematic where the proscribed conduct is very broadly defined, where the involvement of the judiciary is limited, or where the burden of proof is very low.

42. States have a right to determine who is entitled to enter and stay in their territory. However, where an individual has crossed an international border, a number of rights apply, particularly if the individual applies for refugee status (A/62/263). While States have the right to detain foreigners prior to deportation, it is important that there be appropriate safeguards before any deportation takes place, particularly to avoid the return of an individual to a country where there is a risk of ill-treatment (refoulement). The Special Rapporteur recalls that international human rights law forbids statelessness and includes the right to a nationality. Given the risk of statelessness that exists whenever nationality is withdrawn, States that have adopted or are considering adopting measures that aim to remove nationality must ensure that they comply with international human rights law. States must ensure that all persons enjoy the right to a nationality without discrimination of any kind and that no one is deprived of his or her nationality on the basis of discriminatory grounds. Any violation of the right to a nationality must be open to an effective remedy.[69]

3. Impact of measures that target specific groups or individuals

43. On paper, most strategies to counter violent extremism are generic. In practice, however, they tend to target specific groups determined to be most "at risk" of being drawn

[68] United Kingdom Counter-Extremism Strategy, paras. 100 ff.

[69] A/HRC/13/34. See also Human Rights Council resolutions 7/10 and 10/13 and Craig Forcese, "A tale of two citizenships: citizenship revocation for 'traitors and terrorists'", *Queen's Law Journal*, vol. 39, No. 2 (2014), p. 551.

to violent extremism.[70] The Special Rapporteur recalls the work of his predecessor on the risks linked to "terrorist profiling" (A/HRC/4/26) and notes that The Hague-Marrakech Memorandum on Good Practices for a More Effective Response to the Foreign Terrorist Fighters Phenomenon of the Global Counterterrorism Forum notes as good practice that States should "avoid and seek to prevent the identification of ... violent extremism with any religion, culture ethnic group nationality, or race". The Special Rapporteur is of the opinion that effective strategies should not be based on pre- or misconceptions about the groups that are most susceptible to radicalization or violent extremism, but should be developed by relying on evidence to ensure a proper understanding of the national and local issues that have an impact on the radicalization process. This will not only ensure that all at-risk communities are adequately engaged with, but also that entire communities and ethnic or religious groups are not stigmatized.[71] Article 26 of the International Covenant on Civil and Political Rights not only guarantees to all persons equal and effective protection against discrimination on any ground, but entitles all persons to equality before the law and equal protection of the law.[72] In addition, it is important that those involved in the delivery of programmes consider whether to use the countering or preventing violent extremism label, as doing so may make recipients feel that they are seen as supporting or condoning extremism. While these programmes may bring needed resources to communities, they also run the risk of isolating communities whose support is critical to the programmes' effectiveness.

44. Several States have set up programmes to counsel, support and mentor individuals who are considered "at risk" of or "vulnerable" to violent extremism.[73] A primary concern is how those individuals are identified, what indicators are taken into consideration and who is qualified to refer.[74] Independent evaluations of the programmes' effectiveness are scarce, owing largely to a lack of transparency in their implementation. Yet their impact on a number of rights, including the rights to freedom of thought, religion, privacy and non-

[70] See letter from the American Civil Liberties Union dated 24 December 2015 addressed to the Special Rapporteur, on file, and letter dated 18 December 2014 from the American Civil Liberties Union addressed to Lisa Monaco, Assistant to the President for Homeland Security and National Deputy Security Adviser, available from www.aclu.org/files/assets/141218_cve_coalition_letter_2.pdf. See also programmes aimed at members of Jemaah Islamiyah and their families, available from http://rrg.sg/about-us; and Arun Kundnani, *Spooked! How Not to Prevent Violent Extremism* (London, Institute of Race Relations, 2009).

[71] Kundnani, *Spooked!*; Romaniuk, *Does CVE work?*, pp. 16-18; Thomas, "Failed and friendless", p. 8; United Kingdom Prevent strategy, para. 3.25.

[72] Human Rights Committee, general comment No. 18 (1989) on non-discrimination.

[73] See Didier Bigo and others, *Preventing and Countering Youth Radicalisation in the EU* (European Parliament, 2014), p. 27. See also Michelle Boorstein, "Muslim activists alarmed by the FBI's new game-like counterterrorism program for kids", *Washington Post*, 2 November 2015.

[74] See Government of the United Kingdom, *Channel Duty Guidance: Protecting Vulnerable People from Being Drawn into Terrorism*, annex C, Vulnerability Assessment Framework (2015). See also BBC Radio 4, *The Report: Changing Jihadi Minds*, aired on 3 December 2015, which — referring to the United Kingdom Channel programme — noted that in the absence of official numbers, it was known that 7,000 individuals had been referred for possible mentoring, but that 80 per cent were not ultimately deemed by panels to need mentoring. See www.bbc.co.uk/programmes/b06qmpr0, at 12:40. See also the figures provided by the National Police Chiefs' Council to BBC Radio 4: 415 children under 10 and 1,400 children between the ages of 11 and 15 were referred to the Channel programme from April 2012 to December 2015. See *Today* programme, 21 January 2015, available from www.bbc.co.uk/programmes/b06wg9dt, at 38:00. See also letter from the American Civil Liberties Union dated 24 December 2015 to the Special Rapporteur, in which the organization noted that between 2007 and 2013, 2,653 people had been referred to Channel, of whom roughly 57-67 per cent each year were recorded as being Muslim.

discrimination, can be important. It should be borne in mind that the effectiveness of any programme that requires the contribution and assistance of family members or friends, including by referrals to the police,[75] relies on trust that the authorities will respect the rights of the individuals referred.

45. In addition, some States have adopted or are considering adopting a legal duty for public-sector bodies to assist in identifying individuals who may be vulnerable to or at risk of being drawn into terrorism, to ensure that they are given appropriate advice and support. Concerns have focused on the incompatibility of this obligation with the functions of some public bodies, particularly those involved in health care, where duties of confidentiality might be compromised, and education,[76] where the free flow of ideas is crucial. Educators should not be required to act as watchdogs or intelligence officers, nor should they be obliged to act in ways that might impinge the right to education, academic freedom or freedom of expression, thought, religion or belief.[77] Such measures may lead pupils and students to self-censor to avoid being branded "extremist" or cause teachers and other staff to view pupils and students as potential threats[78] or to avoid discussing certain issues or inviting guest speakers whose views may be controversial.[79] The lack of certainty about what elements to take into consideration may also lead educators to be overly cautious and needlessly report through fear of sanctions.[80] In this respect, the Special Rapporteur recalls the overriding principle of the Convention on the Rights of the Child: that in all actions concerning children, the best interests of the child shall be a primary consideration (art. 3). In addition, the Convention states that measures should be taken to ensure that the child is protected against all forms of discrimination or punishment on the basis of the opinions or beliefs of the child's parents, legal guardians or family members (art. 1).

46. The Special Rapporteur concurs with the Special Rapporteur on freedom of opinion and expression that freedom of expression is essential to creating an environment conducive to critical discussions of religious and racial issues and to promoting understanding and tolerance by deconstructing negative stereotypes. For the right to freedom of thought, conscience and religion to be fully realized, robust examination and criticism of religious doctrines and practices must be allowed (see A/67/357, para. 36). The Special Rapporteur warns against the possible counterproductive impact of reporting measures if they lead individuals to avoid open discussions for fear of being branded "extremist".

47. Finally, there can be a perception among communities that counter-extremism initiatives are simply another vehicle for the State to implement the security aspects of its

[75] See France's toll free number, available from www.stopdjihadisme.gouv.fr/decrypter.html.

[76] See, for example, *Guardian*, "Texas schoolboy handcuffed for bringing homemade clock to school", 15 September 2015 and "School questioned Muslim pupil about Isis after discussion on eco-activism", 21 September 2015. See also Institute for Race Relations, "Prevent and the children's rights convention", January 2016.

[77] See the letter to the *Independent* newspaper signed by more than 40 academics: "PREVENT will have a chilling effect on open debate, free speech and political dissent".

[78] See *Guardian*, "Schools monitoring pupils' web use with 'anti radicalization software'"; 10 June 2015. See also Ben Ferguson, "Is your child a terrorist? UK primary school children asked to complete radicalization survey", Vice News, 29 May 2015); Alex Bushill, "'Radicalisation risk' pupils in Waltham Forest named", BBC News, 30 November 2015; and letter from the American Civil Liberties Union dated 24 December 2015.

[79] For a related issue, see, for example, Shaheed Fatima, "Deradicalization, free speech, and academic freedom", Just Security, 16 March 2015. See also The Times Higher Education, "Stop, look, listen: the university's role in counterterrorism", 14 January 2014.

[80] Fatima, "Deradicalization". See also *Guardian*, "Rules to fight extremism 'creating fear among teachers and pupils'", 12 January 2016.

counter-terrorism strategy. Individuals or communities targeted by measures to counter violent extremism have perceived, rightly or wrongly, that some of the measures, such as individualized counselling or mentoring[81] and community outreach[82] (particularly where it involves the police), are intended to gather information and intelligence on individuals, groups and communities[83] rather than assist them in building resilience against the threat of violent extremism. If substantiated, such approaches may violate the right to privacy and, by further stigmatizing certain groups and undermining community trust in law enforcement, would be counterproductive.[84] The Special Rapporteur notes that to be effective, a clear distinction needs to be made between measures to counter violent extremism and the security aspect of countering terrorism.

D. Conditions conducive to violent extremism

48. The comprehensive agenda that the General Assembly set out in 2006 in its Global Counter-Terrorism Strategy contained two pillars that addressed some of the key elements of countering or preventing violent extremism. These are pillar I, on measures to tackle the conditions that may be conducive to terrorism, and pillar IV, on measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism. Unsurprisingly, these two pillars have attracted the least attention and remain relatively unimplemented compared to the more operational- and security-focused pillars II and III.

49. As consensually agreed by the General Assembly, the "conditions conducive" of pillar I include, but are not limited to, prolonged unresolved conflicts, dehumanization of victims of terrorism, lack of rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socioeconomic marginalization and lack of good governance. The Special Rapporteur welcomes the Secretary-General's current emphasis on the implementation of this pillar as part of the identified need to focus on prevention. Indeed, while nothing can justify acts of terrorism, the Special Rapporteur fully agrees that individuals are not drawn to terrorist violence in a vacuum. Just as measures that focused solely on the security aspects of countering terrorism were insufficient to address the spread of terrorism, measures that focus solely on suppressing the final manifestations of violent extremism are unlikely to contain the spread of the phenomenon itself.

50. The Special Rapporteur would nevertheless like to issue a word of caution. Many of the issues contained in pillar I are already being pursued by States in the fields of development, education, good governance, democracy or the promotion of human rights, without being labelled as preventing or countering violent extremism. It is important that in addressing them, they are not instrumentalized by being linked to the broader agenda to counter violent extremism. For example, while human rights violations may be a factor conducive to violent extremism, the State must respect, protect and promote the rights of all individuals regardless of any broader agenda. Human rights are and must be viewed as

[81] BBC Radio 4, *The Report: Changing Jihadi Minds*.

[82] See letter from the Brennan Center for Justice at New York University Law School and others dated 10 July 2015 addressed to Representative Michael McCaul and Representative Bennie Thompson on H.R. 2899, Countering Violent Extremism Act of 2015.

[83] American Civil Liberties Union, letter to Lisa Monaco and "Eye on the FBI: San Francisco", 27 March 2012.

[84] Michael Price, "Community outreach or intelligence gathering?: a closer look at 'countering violent extremism' programs", Brennan Center for Justice; Thomas, "Failed and friendless"; and Kundnani, *Spooked!*, chap. 6. See also BBC Radio 4, *The Report: Changing Jihadi Minds*.

fundamental ends in themselves, even if their promotion is also a means to achieve a wider agenda.

51. In addition, as is the case for association with counter-terrorism measures or policies (A/70/371), humanitarian actors may be reluctant to be co-opted into any agenda to prevent or counter violent extremism, owing to concerns that their personnel will be at greater risk of attack or that doing so will compromise the relationships they have with stakeholders. Any involvement in programmes that have the "violent extremism" label should be safe and voluntary. Where humanitarian aid or development assistance programmes include a preventing violent extremism component, it is important to bear in mind that humanitarian aid should be provided on the basis of an identified need and not because a group has been determined to be "at risk" of radicalization.

E. Violent extremism and gender

52. It is often highlighted that while women have long been involved in violent extremism and terrorism, the gender dimension of terrorism and violent extremism has largely been overlooked.[85] The Special Rapporteur notes that recent international and national efforts to address violent extremism do include a gender dimension. In paragraph 53 of his Plan of Action, the Secretary-General placed significant emphasis on gender, making several recommendations for better consideration of the issue and noting in particular that societies for which gender indicators were higher were less vulnerable to violent extremism. This followed a report addressing conflict-related sexual violence perpetrated in the context of rising violent extremism (see S/2015/203, paras. 82-85), in which the Secretary-General had concluded that efforts to counter extremism must include efforts to empower women and address the spectrum of crimes of sexual violence that extremist groups perpetrated. More recently, the Security Council has introduced the question of violent extremism to its women, peace and security agenda (resolution 2242 (2015)). In the resolution, the Council recognized the differential impact of terrorism and violent extremism on women and girls, including in the context of their health, education and participation in public life, and made recommendations to address the issue better at the national and international levels. As a first step, in September 2015, the Counter-Terrorism Committee held its first open briefing on the role of women in countering terrorism and violent extremism. Civil society-led initiatives have engaged women in preventive counter-extremism programmes (for example, in the work of the non-governmental organization Women Without Borders). The inclusion of women leads to a more comprehensive understanding of the causes of violent extremism and more localized, credible, inclusive and resonant strategies to build resilience to extremism.

53. Critics have observed that efforts to include women have tended to emphasize their engagement only at the informal or local level and often in ways that use and reinforce gender stereotypes (women as victims of terrorism; women as mothers). They also run the risk of instrumentalizing women's engagement, where women are empowered, educated or encouraged to participate only in furtherance of an agenda to counter or prevent violent extremism. If women's rights become secondary to and identified with a broader agenda, the risks of backlash against gender equality, women's rights defenders and girls' education increases, as does the possibility that women's rights and gender equality will be bartered

[85] Most of the information in this section is contained in a letter dated January 2016 from Jayne Huckerby to the Special Rapporteur, on file, as well as in various articles, including Jayne Huckerby, "Women and preventing violent extremism: the U.S. and U.K. experiences", Center for Human Rights and Global Justice Briefing Paper, 2012 and several publications on the Just Security website, available from www.justsecurity.org/author/huckerbyjayne/.

away when that is seen to further national security interests. Further, more attention needs to be paid to identifying if, and when, categorizing or documenting certain activities by women as countering or preventing violent extremism will be unsafe, unprincipled, or counter-productive.

IV. Conclusions and recommendations

54. The recognition that a strict security approach to countering terrorism has failed to prevent the spread of terrorism, coupled with (and evidenced by) the proliferation of terrorist groups, has placed the prevention of violent extremism firmly on the international, regional and national agendas. Preventing or countering violent extremism is often presented as a softer approach to countering terrorism. Yet the elasticity of the term "violent extremism", and the lack of clarity on what leads individuals to embrace violent extremism, means that a wide array of legislative, administrative and policy measures are pursued that can have a serious negative impact on manifold human rights. In addition, targeted measures to counter violent extremism can stigmatize groups and communities, undermining the support that Governments need to successfully implement their programmes, and having a counter-productive effect. They can also be used to limit the space in which civil society operates and may have a discriminatory impact on women and children.

55. The Secretary-General's Plan of Action to Prevent Violent Extremism, with its strong focus on human rights and on implementation of measures to address the conditions conducive to violent extremism, is a promising framework for the United Nations and Member States. Yet, the lack of semantic and conceptual clarity that surrounds violent extremism remains an obstacle to any in-depth examination of the impact of strategies and policies to counter violent extremism on human rights as well as on their effectiveness in reducing the threat of terrorism. In turn, this renders any evaluation of the proportionality and necessity of the rights-limiting measures that are adopted very challenging. This is compounded by the lack of transparency of some Governments with respect to some of their programmes.

56. The Special Rapporteur makes the following recommendations:

(a) Increased research should be undertaken to gain a better understanding of the phenomenon of violent extremism. This must include an examination of the factors contributing to radicalization and the impact of the various programmes on human rights. Transparency in States' counter-extremism strategies is crucial to this research, and it remains critical that States deepen their understanding of the link between neglect of human rights and grievances — actual or perceived — that cause individuals to make the wrong choices;

(b) States should focus their efforts on the implementation of pillars I and IV of the Global Counter-Terrorism Strategy, as recommended in the Secretary-General's Plan of Action to Prevent Violent Extremism, as the only holistic, effective and sustainable approach to this issue. Any other approach is likely to be ineffective, detrimental to human rights, and even counterproductive;

(c) All strategies and policies adopted by States to counter violent extremism must be firmly grounded in and comply with international human rights law. Whenever rights-limiting measures are considered, their potential impact on women, children, ethnic and religious communities or any other specific group must be considered. All measures must be subject to the same level of parliamentary and judicial scrutiny as other measures taken to counter terrorism. Particular attention should be paid to any impact on freedom of expression and freedom of thought,

conscience and religion. Measures that specifically target individuals or groups, whether in law or practice, should not be discriminatory;

(d) The broad-brush "securitization" of human rights, international development, humanitarian assistance, education, community integration, gender or any other agenda by the State or the international community must be avoided. The State must respect, protect and promote the human rights of all individuals, of all ages, genders and ethnic or religious affiliation, without discrimination and without framing this obligation as part of any broader agenda, including the prevention and countering of violent extremism. Whenever a new area of engagement for preventing or countering violent extremism is envisaged, a proper analysis of the impact on all those involved as providers or recipients must be undertaken. Any engagement in government initiatives must be safe and voluntary.